

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:)	CASE NO: 18-01673-5-DMW
)	
SUZANNE ALICIA NELSON)	
REBECCA ASHLEY NELSON,)	
)	
DEBTOR(S))	CHAPTER 7 PROCEEDING

MOTION TO DISMISS CHAPTER 7 PROCEEDING
PURSUANT TO 11 U.S.C. § 707(b)(3)

NOW COMES the Bankruptcy Administrator for the Eastern District of North Carolina (“BA”), by and through her undersigned counsel, and hereby moves the Court for an order dismissing the Debtors’ Chapter 7 case pursuant to 11 U.S.C. § 707(b)(3). The BA supports the motion in the following:

GENERAL ALLEGATION AND JURISDICTION

1. On April 3, 2018, the Debtors filed the above-captioned case under Chapter 13 of the United States Bankruptcy Code.
2. On October 17, 2018, the Debtors filed a Notice of Conversion to Chapter 7 [DE #35].
3. On February 26, 2019, the Court granted the BA’s second motion to extend the time to file a motion to dismiss the Debtors’ case pursuant to Section 707(b)(3) of the Bankruptcy Code. Accordingly, this motion is timely filed.

DEBTORS’ SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS

4. The Debtors own real property located at 9245 Miranda Drive, Raleigh, North Carolina (“Residence”). Wells Fargo Home Mortgage holds a lien against the Residence with a petition date balance of \$275,833.00.

5. On October 3, 2018, Wells Fargo Bank, N.A. filed a motion for relief from stay with respect to the Residence. On October 16, 2018, the Debtors filed a response in opposition to Wells Fargo's motion for relief. On December 4, 2018, the Debtors withdrew their response to Wells Fargo's motion for relief. On December 10, 2018, the Court granted Wells Fargo's motion for relief.

6. The Debtors own a 2015 Volvo S60 and a 2015 Chevrolet Traverse. On October 17, 2018, the Debtors filed a Statement of Intention in which they state that they intend to surrender the Volvo.

7. The Debtors owe total priority unsecured debt of \$42,700.00. The Debtors owe total non-priority unsecured debt of \$444,152.95, of which \$305,871.00 relates to student loan debt.

8. The Debtors have two children – a 4-year-old son and a 5-year-old daughter.

PETITION DATE INCOME AND EXPENSES

9. On the petition date, Suzanne Nelson was operating Nelson & Nelson, PLLC, a family law practice. Rebecca Nelson, who is also an attorney, was working for Carolina Legal Staffing, LLC.

10. On the originally filed Schedule I, the Debtors showed net monthly income of \$12,315.00.

11. On the petition date, the Debtors listed monthly expenditures in the amount of \$14,162.89.

POST-PETITION INCOME AND EXPENSES

12. Upon information and belief, each of the Debtors started working with Mcilveen, PLLC, a family law practice, in early September 2018. The Debtors started working with Mcilveen, PLLC a month and a half *prior* to converting to Chapter 7.

13. Based on copies of the Debtors' respective pay stubs, Suzanne Nelson earns \$11,400.00 per month in gross wage income and Rebecca Nelson earns \$10,000.00 per month in gross wage income. After certain payroll deductions, the Debtors' combined net monthly income is \$14,997.34. The Debtors' current net monthly income is now \$2,682.34 *higher* than their petition date net monthly income.

BASIS FOR DISMISSAL

14. The Debtors' case should be dismissed pursuant to 11 U.S.C. § 707(b)(3). As stated above, the Debtors earn more now than they did when the case was filed. As a result, the BA believes the Debtors have the ability to repay their creditors either through a Chapter 13 Plan, or outside of bankruptcy.

15. The BA reserves the right to amend this motion in the future to include additional grounds for dismissal; including, dismissal under 11 U.S.C. § 707(a).

WHEREFORE, the Bankruptcy Administrator respectfully moves the Court for entry of an order which grants dismissal of the Debtors' case pursuant to 11 U.S.C. § 707(b)(3); and, any other relief that this Court may deem just and equitable.

Respectfully submitted, this 28th day of February, 2019.

Marjorie K. Lynch
Bankruptcy Administrator

By: /s/Brian C. Behr
Brian C. Behr
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CERTIFICATE OF SERVICE

I, Rick P. Hinson, of 434 Fayetteville Street, Suite 640, Raleigh, North Carolina, 27601, certify:

That I am, and at all times hereinafter mentioned was more than eighteen (18) years of age;

That on the 28th day of February, 2019, I served copies of the foregoing document on the following:

William H. Kroll
Debtors' Attorney

Joseph M. Lischwe
Chapter 7 Trustee

By electronic service via cm/ecf, and,

Suzanne Alicia Nelson
Rebecca Ashley Nelson
9245 Miranda Drive
Raleigh, NC 27617

by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail.

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 28th day of February, 2019.

By: /s/ Rick P. Hinson
Rick P. Hinson
Bankruptcy Analyst
Bankruptcy Administrator's Office
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Raleigh, NC 27601